

Help in Deconstructing the Zimmerman Acquittal: The Suspicion Heuristic

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L. Song Richardson & Phillip Atiba Goff, *Self-Defense and the Suspicion Heuristic*, 98 **Iowa L.R.** 293 (2012).



Camille Nelson

I like the article *Self-Defense and the Suspicion Heuristic*; consistent with Jotwell's tagline, I like it lots. The timing of this short review is apt. The Zimmerman verdict was recently rendered. It is still fresh in our minds, protests are taking place across the United States, President Obama has delivered a landmark speech on race in America, reflecting that, "Trayvon Martin could have been me . . ." *Self-Defense and the Suspicion Heuristic* is an important work that lends insight into thought processes that could have led both to the killing of Trayvon Martin and the verdict of acquittal.

This Iowa Law Review article, authored by a law professor (Richardson) and social psychologist (Goff), explores the subtle "mental processes [that] can conspire to produce racially discriminatory behaviors." (P. 295.) In attempting to disabuse the reader of the assumption that Mr. Zimmerman must have been a bigot or a racist, meaning a conscious discriminator, Richardson and Goff elucidate predictable and pervasive unconscious racialized psychological processes that "warp the perceptions of even the most egalitarian of individuals." (P. 295.) They call for "a new legal and theoretical framework that can account for these biases—one that does not rely upon the fiction of the objective decision-maker or the scapegoat of the consciously biased actor." (P. 295.) Tapping the mind sciences to illuminate unconscious psychological processing that "can lead to systematic errors in judgment about criminality," the authors introduce "the suspicion heuristic." They employ this heuristic, which is defined as a "mental shortcut that often leads to systemic errors in determining who is and is not suspicious" (P. 297) to interrogate reasonableness determinations in self-defense doctrine.

The suspicion heuristic seeks to explain how even the perception of race, without animus, can "bias judgments of criminality." (P. 296.) Providing an overview of the relevant mind sciences, Richardson and Goff explore the study of heuristics ("the human tendency to use decision-making shortcuts") (P. 297) and biases, then implicit bias, which has been found to disadvantage marginalized groups, including women, people of color, and those individuals with lower socio-economic status. (P. 297.)

The authors start with the reality that, “given the social construction of crime as racially Black, people are more likely to both consciously and non-consciously associate Blacks with criminality.” (P. 312.) In doing so, they reject ways of thinking that are “mired in antiquated lay theories of human nature,” (P. 312) in favor of the suspicion heuristic which they posit as more “consistent with four decades of research into how humans think.” (P. 312.)

The authors reference numerous studies and mind-science research on point, including research indicating that police officers are not immune from biased thought-processes. For instance, they cite a study which concludes that “an officer’s implicit association of Blacks with apes was a significant predictor of [the] overestimation [of the age of a black child],” (P. 306) which in turn is assumed to lead to harsher treatment. In acknowledging this implicit dehumanization, however, the authors do not connect this to the long history of scientific racism, for instance that perpetrated under the pseudo-science of phrenology and craniology, which operated to privilege whiteness whilst simultaneously dehumanizing people of color.

Importantly, the authors describe how the heuristic recognizes that “Blacks serve as our mental prototype (i.e. stereotype) for the violent street criminal. Furthermore, the tendency for black suspects to be over-represented in media portrayals of violent street crime makes the Black-as-criminal stereotype readily available.” (P. 310.) The consequences of such racialized unconscious analysis are serious, “if the person being judged is non-White, individuals are more likely to make a mistaken judgment of criminality.” (P. 311.) In analyzing the way the doctrine of self-defense deals with the question of perceived threats, the authors link legal doctrine and research from the mind sciences to explain the ways in which an individual may rely upon racialized heuristics and be informed by implicit racial associations. “The suspicion heuristic thus explains how mere knowledge of ubiquitous criminal stereotypes can cause pernicious errors in judgment and perception, regardless of whether the individuals involved believe or subscribe to the stereotype.” (P. 314.) This conclusion validates and brings insight to the ongoing conversation around the killing of Trayon Martin, as well as concerns with the verdict acquitting George Zimmerman. Furthermore, the authors state, “people are more likely to recall evidence of Black criminality than instances when that stereotype was false.” (P. 312.)

What the article does not explain, perhaps a worthy prequel, is just how and why those “ubiquitous criminal stereotypes” came to be, such that they could be activated even in the absence of conscious and deliberate thoughts. That is, *why*, given “dwindling racial bigotry” (P. 312) does non-conscious bias against people of color, Black people in particular, persist, and where did it begin? The authors indicate that people have racialized go-to’s; that is, automatic, non-conscious, unintentional, and disparately racialized ways of thinking. These heuristics interact with our implicit biases to produce disparate outcomes for some people, Black people being their main focus. This begs the question: Why do we have the particular racial short-cuts that we do in the first place?

That said, this is an important and timely article. It provides an easily understandable primer on the law of self-defense, its history, development, classification, and utilization. (Pp. 314-318, 321-334.) This depth of analysis, combined with a solid description of the duty to retreat, and the stand-your-ground laws would delight law students engaged in criminal law exam preparations. (Pp. 326-332.) It also demonstrates the ways in which the *uber*-powerful legal notion of reasonableness is impacted by the suspicion heuristic, thereby having broad doctrinal appeal. (Pp. 318-320.) However, I think the greatest strength of the article is in providing a way to understand discrimination—and racism in particular—in the absence of intentionality. American jurisprudence addressing discrimination and bias remains fixated upon the intent standard, thereby excluding the contemporary manifestations of unintentional, implicit, and covert discrimination. The lack of a nomenclature about unintentional discrimination has diminished legal analysis (see for instance, Charles Lawrence III’s pioneering 1987 Stanford Law Review article, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism), which still expects and sanctions only explicit and more obvious forms of discrimination.

This article should help us in this respect; it has provided both the empirical evidence to unmask, and a language to elaborate upon, the fiction of exclusively intentional forms of discrimination.

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